IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 856 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 and 2 Yes

3 to 5 No

JESUS AND MERRY GUJARAT SOCIETY

Versus

LAKHABHAI ARJANBHAI,SINCE DECEASED BY HIS HEIRS & L/R

Appearance:

MR RD DAVE for Petitioner

MR JASHWANT MAKWANA

for Respondent Nos. 1/1 to 1/4.

Mr.V.B.Garania, learned A.G.P.

for Respondent Nos. 2 & 3.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 05/03/98

ORAL JUDGEMENT

1. The petitioner is a registered Society under the Societies Registration Act No.21 of 1860. It is alleged that it was also registered as a public trust under the provisions of the Bombay Public Trusts Act

No.29 of 1950 at Baroda office. The Society passed a Resolution in its meeting held on 1.4.74 to purchase land for agricultural training to be given to Home Science girls of "Seva Niketan" i.e. the Institution run by the Society at village Gothada, Taluka Sevali, District Baroda and to move an application for that purpose before the concerned Collector for permission to purchase the land of S.No.24 belonging to one Shri Lakha Arjan and S.No.27 of Manilal Govind of Gothada. It is alleged that "Seva Niketan", Gothada (Sevali) also runs a "J.M. Mahila Unnati Kendra" and "J.M. Gruhini School" at Gothada. On 28.5.74 the respondent No.1 Lakha Arjan (who is now represented by LRs. i.e. respondents Nos.1/1 to 1/4) entered into a written agreement to sell the agricultural land admeasuring 2 Acres and 23 Gunthas in S.No.24 of village Gothada to the petitioner - Society for a sum of Rs.17,500/-. The reference has been made to the order dated 2.8.74 passed by the Collector,Baroda granting permission for the sale and purchase of the land of S.No.27 belonging to Manilal Govindlal and land of S.No.24 belonging to Lakha Arjan. The sale deed was then executed on 29.8.74 by the respondent Lakha Arjan in favour of the petitioner - Society but it was executed only in respect of 1 Acre and 38 Gunthas of land out of S.No.24 belonging to Lakha Arjan, although Banakhat was made for the entire land i.e. 2 Acres and 23 Gunthas. The sale deed was registered on 30.9.74. The case of the petitioner Society is that the respondent Lakha Arjan had represented to the Sister Ann Joan of the petitioner Society that he belonged to poor strata of the society and, therefore, 25 Gunthas of the land out of 2 Acres and 23 Gunthas comprising S.No.24 be allowed to remain with him so that he can maintain himself and his family and that if any objection is later on taken on the ground of fragmentation, he commits himself to set things right in accordance with the Rules. These averments have been made in the petition to explain as to why the sale deed was executed only in respect of 1 acre and 38 Gunthas of the land instead of 2 Acres and 23 Gunthas, although the agreement and the permission granted by the Collector was for the entire land of 2 Acres and 23 Gunthas and thus out of sympathetic consideration the petitioner Society purchased only 1 Acre and 38 Gunthas of land and yet did not reduce the amount of Rs.17,500/- which was agreed for the entire land of 2 Acre and 23 Gunthas. It is also stated that the petitioner Society had in fact paid Rs.18,768.50 Ps. to the respondent including the advances, which had been made to the respondent on his frequent personal needs. Upon the execution of the sale deed dated 29.8.74 the possession of the land admeasuring 1 Acre and 38 Gunthas was handed over to the petitioner

Society and the case of the petitioner - Society is that this land is being used to achieve the objects of the Society, the land was mutated in favour of the petitioner -Society in Revenue Records by Mutation Entry No.7063 on 9.1.75 certified on 20.4.75.

2. That later on after a period of nearly 6 years a notice dated 1.9.80 was issued by the Assistant Collector to show cause as to why the said sale should not be declared invalid being in contravention of the Bombay Prevention of Fragmentation Act. The matter was then heard before the Assistant Collector, Baroda who passed the order dated 27.5.81 that the sale of 1 Acre and 38 Gunthas out of S.No.24 was not in breach of the said Act and hence the said sale was held to be legal and valid and it was also held that the petitioner was running a School at Gothada and it was catering for public purpose within the ambit of the Government Resolution. The respondent Lakha Arjan then preferred a Revision Petition against the Assistant Collector's order dated 27.5.81 before the Secretary (Appeals) Revenue Department, Government of Gujarat who remanded the matter for fresh notice and fresh hearing vide order dated 16.11.81. In the remanded proceedings, as aforesaid, the Assistant Collector passed an order on 1.6.82 holding that the sale was in contravention of the provisions of S.8 of the Bombay Prevention of Fragmentation Act and, therefore, the possession of the land should be restored to respondent No.1. Against this order dated 1.6.82 passed by the Assistant Collector, this time the petitioner Society preferred Revision Application before the Secretary (Appeals), Revenue Department, who dismissed the Revision Application vide its order dated 30.10.82 conveyed to the petitioner - Society vide communication dated 6.12.82 and thus order dated 1.6.82 passed by the Assistant Collector was confirmed. Aggrieved from this order dated 30.10.82 passed by the Secretary (Appeals) Revenue Department, the petitioner - Society preferred this Special Civil Application on 23.2.83 with the prayer that the impugned orders dated 1.6.82 passed by the Assistant Collector, Baroda and the order passed on 6.12.82 by the Secretary (Appeals) Revenue Department may be quashed and set aside. It appears that while issuing Rule, ad interim relief in terms of para 15(B) was granted in this matter and thereby the operation of the impugned orders dated 1.6.82 and 6.12.82 i.e. Annexures 'L' and 'M' was stayed on 24.2.83. On 20.10.97 this Court (Coram : S.K.Keshote,J) after hearing the leaned counsel for both the sides opined that the Panchanama had to be prepared in respect of the land bearing S.Nos. 17,19,20, 23, 24 and 27 which was purchased by the

petitioner and are in possession of it for all these years with reference to the fact as to what activities on the lands of these Survey Nos. the petitioner is carrying on for all these years, the care was to be taken by the Officer concerned as to what use the lands are being put to by the petitioner and accordingly the Collector, Baroda was directed to get the Panchanama of the lands, as aforesaid, prepared with reference to the aforesaid object and purpose by an officer not below the rank of Deputy Collector and the Panchanama was to be prepared after notice to the petitioner and the respondents Nos.1/1 to 1/4 and the same was to be sent to this court on or before 10.12.97. In pursuance of this order, the Panchanama was prepared on 6.12.97 and the copy of the same is on record.

3. The learned counsel for the petitioner has assailed the impugned orders Annexure 'L' and 'M" dated 1.6.82 and 6.12.82 respectively on several grounds and has also submitted that the objections could not be taken against the executed sale deed of 1974 after a period of 6 years in the year 1980 and while inviting the attention to the objects of the petitioner -Society it has been submitted with reference to the provisions of S.8A that Sections 7 and 8 of the Bombay Prevention of Fragmentation Act, 1947 shall not apply to a transfer of any land for such public purpose as may be specified in this behalf by the State Government by Notification in the Official Gazette. He has invited the attention of this court to the Government Resolution, the copy of which has been placed on record as Annexure "J" at page 41 of the paper book of this Special Civil Application. The contents of Annexure 'J' show that in exercise of the powers conferred by S.8A, the Notification was issued on 14.4.59 declaring that the provisions of S.7 and S.8 shall not apply to the transfer of a land for the public purposes, namely, (i) construction of public wells, tanks, canals, channels or other water ways, (ii) construction of Dharmashalas, Schools, public dispensaries and public libraries, (iii) construction of Roads, (iv) Burial or cremation ground,(v) construction of latrines by a Local Authority for use of the public, (vi) construction of houses by Co-operative housing Societies and (vii) construction of gymnasium for the use of the public. The learned counsel for the petitioner has submitted that the petitioner - Society is a public trust and the Resolution, which was passed by the petitioner -Society on 1.4.74 for purchasing the land in question, copy of which is placed on record as Annexure 'C' at page 20 of the paper book, shows that the land was purchased for training to be given to the Home Science

girls and this activity includes the public purpose of having a School and it is covered by the public purposes mentioned in the Notification issued by the Government of Gujarat, the copy of which is at Annexure 'J'. On these premises, it has been submitted that there was no basis or justification for the Assistant Collector to pass the impugned order dated 1.6.82 nor the order could be upheld, as has been done,by order dated 6.12.82 by the Secretary (Appeals), Revenue Department of the Government of Gujarat. The learned counsel for the petitioner has cited the following cases in support of his submissions and has also relied upon the meaning of the word "School" as given in the Law Lexicon - 1997 Edition by Mr.P. Ramanatha Aiyar as under:

"SCHOOL :-
An institution of learning of a lower grade than a College or a University, a place of primary instruction.

"School" is a generic term, and denotes an institution for instruction or education in general.

A School is an institution for learning; and educational establishment; an assemblage of scholars; those who attend upon the instruction in a school or any king; any place or means of discipline, improvement, or instruction.

The terms "School" also denotes a collective body of pupils in any place of instruction and under the direction and disciplines of one or more instructions."

In XXV(2)GLR 1225 (Ranchhodbhai Lallubhai Patel v. State of Gujarat) the Court considered the case of a transfer without the permission of the Collector in which the proceedings for fine and summary eviction were initiated after 7 years and it was held that the exercise of the powers under S.9 of the Bombay Prevention of Fragmentation Act, 1947 at a grossly belated stage was unreasonable, unjust and illegal. In 1992(1) GLH 93 (Bhaniben Makanbhai Tandel v. State of Gujarat and another) the Court was concerned with the provisions of Bombay Tenancy and Agricultural Lands Act, 1948 and the purchase of agricultural land by a non agriculturist. The delay in initiation of the proceedings by the Government was found to vitiate the proceedings and the order of Mamlatdar to hand over the possession of agricultural land to the original vendor failing which sale was to be declared invalid, was quashed. In this

case, after the registration of the document, mutation entries were made in 1968 and the same was certified on 13.6.69. The contention was that such entry was illegal on the ground that the petitioners were not agriculturists in respect of the land and the transaction was hit under S.63 of the Tenancy Act. The order to hand over the possession back to the original vendor was passed. Aggrieved from the said order, Tenancy Appeal No.66 of 1978 was preferred before the Deputy Collector, Valsad and the same was dismissed on 5.6.78. The Gujarat Revenue Tribunal also dismissed the Revision Application on 11.1.80 and thereupon the Special Civil Application was filed. The Court found that with regard to the entries made in the year 1969, the proceedings under S.84C of the Tenancy Act were initiated in 1975 and thus there was a delay of 7 years and on that ground the impugned orders were quashed. In XVII GLR 464 (Chhaganbhai v. Vallabhbhai) the Court was concerned with the Bombay Prevention of Fragmentation and Consolidation of Holdings Act and the court held that though S.35 of the Act confers upon the State Government revisional jurisdiction which it may exercise 'at any time', but it should exercise it within a reasonable time. It was further held that what is a reasonable time depends upon the facts and circumstances of each case and merely because S.35 or any other Section of the said Act does not prescribe any period of limitation and provides that it may be exercised 'at any time', it does not mean that it can be exercised after any length of time. In para 9 of this judgment a reference was made to a Supreme Court decision in the case of State of Gujarat v. Patel Raghav Natha and others reported in 10 GLR 992 in which the Supreme Court held that even if no limitation is prescribed, the jurisdiction is to be exercised within a reasonable time depending upon the facts and circumstances of each case. The exact words, in which the Supreme Court observed, are as under:-

"The question arises whether the Commissioner can revise an order made under sec.65 at any time. It is true that there is no period of limitation prescribed under sec.211 but it seems to us plain that this power must be exercised in reasonable time and the length of reasonable time must be determined by the facts of the case and the nature of the order which is being revised."

This principle laid down by the Supreme Court was applied by a Division Bench of this court in the case of Muman Habib Nasir Khanji v. State of Gujarat and others, reported in 11 GLR 307, as has been mentioned in the end of para 9 of this judgment. In para 10 of this judgment,

the Court has mentioned that in Bhagwanji Bawanji v. State of Gujarat and another, reported in 12 GLR 156, another Division Bench of this court had also taken the same view in the context of exercise of revisional jurisdiction under S.211 of the Bombay Land Revenue Code. The Court, in the conclusion, did not uphold the impugned order and quashed and set aside the same while allowing the petition. With regard to the exercise of the revisional powers under S.211 of the Bombay Land Revenue Code, the same view was taken by a single Bench of this Court in the case of Evergreen Apartment Co-op. Housing Society v. Special Secretary, Revenue Department, Gujarat State, reported in 1991(1) GLR 113 and again following the Supreme Court Judgment reported in AIR 1969 SC 1297 (State of Gujarat v. Patel Raghav Natha) (Supra), it was held that the revisional powers must be exercised within a reasonable time though no period of limitation has been prescribed. in AIR 1983 SC 1239 (Mansaram v. S.P. Pathak) the Supreme Court was concerned with a case in which an eviction order had been passed after 22 years with reference to the provisions of Berar Letting of Houses and Rent Control Order (1949) on the ground of contravention of Clause 22(2) and it was held that the power under Clause 28 must be exercised within reasonable time. It was observed by the Supreme Court that the exercise of power within a reasonable time inheres the concept of its exercise, within a reasonable time although no limitation is prescribed.

4. As against it Mr. Makwana appearing on behalf of respondents Nos.1/1 to 1/4 argued that it was a case of restricted tenure land and such land could not be transferred. He has also submitted that the land, which was sold out, was the joint family property and Lakha Arjan was not the sole owner. He was only a 'Kartha' of the Hindu Undivided Family and was not competent to sell out the land alone. He has also submitted that the petitioner was not an agriculturist and hence it could not purchase the land. The land has to be sold by one farmer to another farmer and he has also submitted that the order Annexure 'O' was in respect of the land of 2 Acres and 23 Gunthas and part of it could not be sold out and hence while purchasing the land, the petitioner had flouted the permission dated 2.8.74 granted by the Collector, Baroda and, therefore, the impugned orders dated 1.6.82 and 6.12.82 had been rightly passed. He had also submitted that although the land was given for the purpose of School, there is no such School in existence and even if the land was purchased for a particular purpose, the same was never accomplished, rather defeated. He has placed reliance on AIR 1984 SC 38 (

Mohd. Yunus v. Mohd. Mustaqim) and has submitted that even if the impugned orders contained wrong decision without anything more, it is not enough to attract the supervisory jurisdiction of this Court under Article 227. With regard to this decision, it may be straightaway observed that in this case the Supreme Court held on facts that an appeal lay from an order under Order 21 Rule 92 and further questions raised fell within S.47 of Civil Procedure Code and were appealable. At least revision lay to High Court against the order and hence the High Court had no jurisdiction to interfere with the order of subordinate Judge under Article 227 of the Constitution. He has also cited AIR 1997 Gujarat 121 (Patel Jividas Trikamdas V. Collector and others) a decision by a single Bench of this Court. In this case, the Court considered the question of sale of land so as to create a fragment in the light of S.9 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act. The proceedings questioning the validity of the sale were initiated after 20 years of the transaction, but the Court held that sale deed contrary to the provisions of law was non est and could be challenged at any time. The Court considered the direct question as to whether an illegal transaction or sale in contravention of the provisions of law could be questioned or revoked or cancelled after a lapse of several years. Factually in this decision, as per the facts stated in paras 2 and 3, the petitioners had purchased the land admeasuring 2 Acres in a block of village Dingucha, Taluka - Kalol, District Mehsana by a registered sale deed dated 6.6.68 and the District Collector had initiated proceedings under the provisions of Bombay Prevention of Fragmentation Act, 1947 in the year 1987 i.e. after 19 years for declaring the aforesaid sale transaction as invalid being in violation of the provisions of the Act and after hearing the parties the Collector had passed the impugned order on 30.7.92 under S.9(1) declaring this transaction as illegal and invalid. This decision of the Collector was challenged before the State of Gujarat in Appeal but the Appeal was rejected on 4.10.94 and the Collector's order dated 30.7.92 was confirmed and thereafter the Special Civil Application was filed. The contention was raised on behalf of the petitioners that there was a delay of more than 19 years. In para 4 of the Judgment, the reference has been made to Ranchhodbhai's case (1984 (2) GLR 1225), which was decided on the basis of the judgment rendered in the case of State of Gujarat v. Patel Raghav Natha (AIR 1969 SC 1297) (Supra). The Court had considered the Scheme of the Act and found that there was violation of S.8. It was held that the validity of such an illegal non est

order could be questioned in any proceedings at any stage by anybody. The very nature of non est order in its effect does not create any right, title or interest. The Court has based its decision on the judgment of the Apex court in the case of State of Orissa v. Brudaban Sharma reported in 1995 Supp (3) SCC 249 in which case the Board of Revenue under the Orissa Estate Abolition Act, 1951 had exercised power under S.38B after a period of 27 years whereas the tenancy right had been conferred by the Tehsildar without obtaining prior permission of the Board of Revenue. It was found that the order of the Tehsildar was void and the Board of Revenue was justified in quashing the said order even after lapse of 27 years since the grant of Patta by the Tehsildar in favour of the party and it was laid down by the Apex court that once the order is found to be in violation of the provisions of law,it is illegal and void and, therefore, it is non est for all purposes. It was, therefore, held that the exercise of power by the Board of Revenue under S.38B of the said Act could not be said to be bad and the exercise of power even after 27 years was fond to be legal and valid. Thereafter, in para 7 the Court has observed as under:-

"In view of the decision of the Apex court in the case of State of Orissa v. Brundaban Sharma, (1995 Supp (3) SCC 249) (supra), the two decisions relied on by the learned counsel appearing for the petitioners would not assume any more significance. The ratio of the decision of the Hon'ble Apex Court would undoubtedly water down the ratio of the aforesaid two decisions of this Court. In the circumstances, the aforesaid two decisions relied on by the learned counsel for the petitioners is of no avail."

5. Both the sides had also made submissions with regard to the contents of the Panchanama dated 6.12.97, which was prepared in pursuance of the Court's order dated 20.10.97. I have gone through the contents of the Panchanama. In my opinion this Panchanama, as has been prepared, hardly serve the purpose for which the Court had required the same. The order dated 20.10.97 shows that the Court wanted to ascertain as a question of fact as to what activities had been carried on and were being carried on there for all these years and for what use the land had been put to by the petitioner. In the Panchanama there is no account as to what activities were being carried on in the land in question. No doubt in the Panchanama in the end of para 6 at page 11 it is mentioned as under:-

"Before the panchas the institution has as per the say of Institution since the date of purchase all three S.Nos. are of their ownership and they are being used for agricultural purposes and in this lands no activity is carried on except the agricultural operation. This facts the panchas know very well."

In the end of para 5 at page 9 it has been mentioned as under:

"And this land is in the possession of the aforesaid institution since they purchased the said land. The institution is doing agricultural work in this land since they have purchased the disputed land. At present this land is lying idle."

Thus the contents of the panchanama do not lead us anywhere to ascertain as to in fact what activities were being carried on for all these years on this land by the petitioner - Society, more particularly because the learned counsel for the petitioner has submitted that for the purpose of imparting agricultural training to Home Science girls, it is not necessary that there must be a building structure on the land and such training can be imparted in the field itself and according to him it is clearly made out from the contents of the Panchanama itself that the petitioner - Society had been doing the agricultural work on this land. In the facts of the present case, I do not find it safe to take a decision on the basis of the contents of this Panchanama as to whether the land in question has been in fact used by the petitioner - Society for the public purpose or not. Yet the fact remains that the petitioner Society had resolved to purchase the land for agricultural training to be given to the Home Science girls. In case the agricultural training is imparted to the Home Science girls, it may certainly be in the nature of a schooling and training the girls in the matter relating to agriculture. If there is any agency which in effect gives a learning through instructions in any branch of learning, it may have the moorings of an institution akin to School since there is a process of learning through instructions and, therefore, it cannot be said that the land was not purchased by the petitioner Society for a public purpose. If it was purchased for a public purpose then it cannot be said to be a case of violation of S.8. Then the embargo and fetters under Sections 7 and 8 of Bombay Prevention of Fragmentation Act would not apply in view of the provisions contained in S.8 because it will be a case of transfer for public purpose. In this view

of the matter, I do not find that it was a case in which the permission, which had been earlier granted by the Collector vide his order dated 2.8.74, had been violated by the petitioner - Society in this transaction. It is a different matter altogether as to whether after the purchase, the land has in fact been used for such public purpose or not and for which period it was so used and since when it is not being used for such a public purpose. It is also not a case in which the transaction has been entered without any permission from the Collector because it is the admitted case that the Collector had granted such permission on 2.8.74 as per the copy of the Collector's order dated 2.8.74, which is on record as Annexure 'O'. Not only this, later when the proceedings were initiated after the period of 6 years and notice dated 1.9.80 was issued by the Assistant Collector, the Assistant Collector after hearing both the sides passed the order dated 27.5.81 that the same was not in breach of the provisions of the Act, the same was held to be legal as is clear from the order Annexure 'I' dated 27.5.81 and it has been categorically held that there is no violation of S.8. Thereafter, when the matter was remanded to the Assistant Collector by an order dated 16.12.81 passed by the Secretary (Appeals), Revenue Department, the Assistant Collector passed the impugned order Annexure 'L' dated 1.6.82. While passing this impugned order dated 1.6.82 the Assistant Collector has mentioned that on this land there was no construction and no School and it was being used only for agricultural purposes and there was only a Kuchha construction and, therefore, there was violation of S.8 and, therefore, the order was passed under S.9. For this finding, neither the Assistant Collector had recorded any evidence nor he had visited the spot and without recording any oral evidence, the permission, which has been granted by the Collector,had been cancelled on consideration of the oral arguments. May be that the Assistant Collector while passing the order dated 1.6.82 had failed to appreciate the niceties of the term of 'School' and schooling for imparting agricultural training for which it was not at all necessary to have any building as such. The Secretary (Appeals), Revenue Department has passed the order almost on the same reasoning and he has also failed to comprehend the correct import of the Government Notification dated 14.4.59 as is evident from the contents of para 4 of this order. Thus the authors of the impugned orders Annexure 'L" dated 1.6.82 and Annexure 'M' dated 6.12.82 have not examined the questions which were involved in this case in a correct perspective and the whole premises on which these orders have been passed is misconceived. Such orders,

therefore, cannot be sustained in the eye of law and I find that the permission, which had been granted by the Collector in favour of the petitioner - Society, was in order. In case the petitioner - Society has in fact violated the conditions on which the permission had been granted, the authorities could have taken action accordingly for violation of these conditions, but it is not the case in the impugned orders that the petitioner Society had, as a question of fact, violated these conditions and the violation of S.8 has been mentioned on the basis of an argument without comprehending the correct import of the purpose and the manner in which the petitioner - Society claims to be serving the purpose for which the land had been purchased. In such a case, when the impugned orders have been passed on a premise for which there was no material and no factual foundation, it can be safely said that it is a case in which the impugned orders have been passed while there was no material to form the opinion, as has been formed, and thus it is a case of no material, and not even an iota of material in the form of evidence and it is only the subjective satisfaction on which the orders have been passed and, therefore, it is a case in which the writ can be issued by this Court and the principle laid down in the case of Mohd. Yunus v. Mohd. Mustaqim (AIR 1984 SC 38) (Supra) is not at all applicable. It has already been pointed out that Mohd. Yunus v. Mohd. Mustaqim(Supra) was a case in which the Appeal lay from an order under Order 21 Rule 92 and the Supreme Court held that at least a revision lay to the High Court against the order and, therefor, the High Court had no jurisdiction to interfere in writ jurisdiction under Article 227. Thus the Supreme Court held that when the revision lay before the High Court,there is no question of invoking the powers under Article 227.

6. So far as the question of delay is concerned, I do not find that it is a case in which there is any non est order as was the case in the case of Patel Jividas Trikamdas v. Collector (Supra). In that case, the Court had come to a conclusion that there was a violation of S.8 and it is clearly discernible from the facts of Patel Jividas Trikamdas v. Collector (Supra) that it was not a case in which the land had been purchased by the petitioner for any public purpose. It was a simple transaction by one individual to another individual. Nobody had pleaded the case of public purpose and the protection of S.8A. The Court found that it was a simple case of violation of S.8 and in this view of the matter the Court held that the transaction was non est. Here is a case in which on one hand there is a Society registered

as a public trust claiming the protection of S.8A and on the other hand an individual who seeks to, approbate and reprobate, to play fast and loose, to blow hot and cold in the same breath, to eat the cake and have it too attempting to take an unfair advantage of law averse to the equity. Be that as it may, the fact remains that the permission, which had been granted by the Collector in the year 1974 to the petitioner - Society, in the facts of this case, can not be said to be non est and it has already been held that such permission was in order and the impugned orders Annexure 'L' and 'M' had been passed in absence of any material, without any evidence on the bald subjective satisfaction. In such a fact situation, the delay of 6 years in initiating the proceedings should also vitiate the proceedings taken against the Society.

7 The upshot of the aforesaid discussion and adjudication is that the Special Civil Application succeeds and the same is hereby allowed. The impugned orders Annexure 'L' dated 1.6.82 and Annexure 'M' dated 6.12.82 passed by the Assistant Collector and the Secretary (Appeals), Revenue Department, Government of Gujarat respectively cannot be sustained in the eye of law and the same are hereby quashed and set aside. Rule is made absolute. No order as to costs.

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